SUPREME COURT, U.S.

FILED

JUL 30 1969

CLERK

No. 202

In the Supreme Court of the United States

OCTOBER TERM, 1969

PAUL BROWN MAYNARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

WILL WILSON,
Assistant Attorney General,

JEROME M. FEIT,
ROBERT G. MAYBACK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	8
Conclusion	11

CITATIONS

Cases:

Chernekoff v. *United States*, 219 F. 2d 721	10
Imboden v. *United States*, 194 F. 2d 508, certiorari denied, 343 U.S. 957	10
Keefer v. *United States*, 313 F. 2d 773	8
Olguin v. *United States*, 392 F. 2d 329	8
United States v. *Seeger*, 380 U.S. 163	9
Vaughn v. *United States*, No. 35 Misc., O.T. 1969	10
Welsh v. *United States*, No. 76, O.T. 1969	10
Witmer v. *United States*, 348 U.S. 375	9, 10

Statutes:

18 U.S.C. 4208(a)(2)	2
50 U.S.C. App. 462	2

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 302

PAUL BROWN MAYNARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 409 F.2d 505.

JURISDICTION

The judgment of the court of appeals was entered on March 28, 1969 (Pet. App. A). A petition for a rehearing was denied on May 1, 1969 (Pet. App. B). Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to June 30, 1969 and the

petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was a basis in fact for the I-A (acceptable for duty) classification given to petitioner instead of the I-O (conscientious objector) classification which he sought.

STATEMENT

After a jury-waived trial in the United States District Court for the Central District of California petitioner was found guilty of refusal to obey an order of his local board to report for induction into the armed services, in violation of 50 U.S.C. App. (Supp. III) 462 (I R, 1-2). On March 19, 1968, he was sentenced to imprisonment for three years with eligibility for parole to be determined under 18 U.S.C. 4208(a)(2) (I R, 28). The court of appeals affirmed (Pet. App. A).

Petitioner's Selective Service file,[1] which was introduced as Government Exhibit 1 at the trial, shows that on July 31, 1961 petitioner, then age 18, registered with Local Board No. 136 at Riverside, California (F. 1-3). On March 11, 1964 petitioner submitted to the board his Classification Questionnaire in which he stated that he was earning $4.30 per hour for a 40-hour work week as a carpenter (F. 7, 9). In the Classification Questionnaire petitioner stated that

[1] We are lodging with the Clerk of this Court a copy of petitioner's Selective Service file to which we refer as "F".

he had been ordained a minister of the Jehovah's Witnesses on June 29, 1952 and that he was a student preparing for the ministry (F. 10). Petitioner also claimed to be a conscientious objector (F. 10).

On April 14, 1964, petitioner returned to the local board a completed Special Form for Conscientious Objectors in which he claimed exemption from both combatant and noncombatant training and service (F. 17-21). In this form he stated that he "must obey God rather than men" (F. 17); that he believed in the use of force only if he or a member of his family was attacked (F. 18); and that the basis of his belief derived from his status as a Jehovah's Witness (F. 20). Petitioner attached letters from three members of the Congregation, attesting to his sincerity. The basic tenor of these letters was that petitioner's sincerity derived from his status as a Jehovah's Witness and his activity in connection with his church. (F. 22-24). One letter stated, "He has regularly participated in the door to door ministry. On occasions putting in 85 hours per month as a minister" (F. 23). The local board by a 3-0 vote classified petitioner 1-A and he was so notified (F. 14). On June 17, 1964, petitioner was given a physical examination and found to be acceptable (F. 26).

On September 15, 1964 petitioner appeared as requested for an interview with the local board (F. 30, 31). When asked why he had not appealed his 1-A classification, he stated that he felt it would do no good. The chairman explained the work program and asked petitioner if he would take a job under that

program. Petitioner replied that he would not accept a 1-A-O classification, but that he would take a 1-O if he did not have to work. Petitioner stated that he felt working in a hospital with sick people would be aiding them to fight at a later date and would be a compromise (F. 31). The board then reviewed the file and refused to reopen petitioner's classification (F. 14).

On March 16, 1965 the local board forwarded petitioner's file to the California Headquarters of the Selective Service System for review (F. 14). The State Director replied that, since petitioner had claimed to be a conscientious objector, the local board should consider the information in the file and reclassify him so that he might exercise his right of appeal (F. 35). On March 26, 1965 petitioner was advised that his file would again be presented to the local board on April 13, 1965, and that if he wished to submit any additional written information regarding his status, he should do so immediately (F. 36). No further information was submitted. On April 13, 1965 the local board by a 3-0 vote again classified petitioner 1-A and he was so notified (F. 14). Petitioner again failed to appeal his 1-A classification (F. 37, 38).

On May 20, 1965, petitioner was ordered to report for induction on June 8, 1965 (F. 14, 39). Petitioner reported as ordered but refused to be inducted.

On June 17, 1965 petitioner's file was again sent to the California Selective Service Headquarters (F. 14). On July 13, 1965, the State Director sent petitioner's file back to the local board, together with a notice of appeal by the Director of Selective Service to the ap-

peal board (F. 44, 45). On July 22, 1965 the appeal board tentatively determined by a 3-0 vote that petitioner should not be classified 1-O (F. 14). On July 26, 1965 the file was sent to the United States Attorney for the purpose of obtaining an advisory recommendation of the Department of Justice (F. 46).

Petitioner was given an opportunity to be heard on his conscientious objector claim by a hearing officer for the Department of Justice, on April 22, 1966 (F. 57, 58). The report of the Department of Justice, received by the appeal board on January 31, 1967, read, in part, as follows (F. 58-61):

> The registrant appeared before the Hearing Officer at Santa Ana, California on April 22, 1966 accompanied by his father. The registrant acknowledged having received a copy of the resume.[2] * * * The Hearing Officer questioned the registrant about the religious basis of his conscientious objector claim and reported that the registrant did not appear to have a sound, firm understanding of his religion; that the registrant's answers to questions indicated that the registrant's reaction to certain situations was opposite to that of the pacifist and his answers seemed to be inconsistent with pacifist views; that the registrant referred only to the very basic tenets of his religion and did not appear to have the knowledge of his religion that would enable him to be classified as a minister. The registrant stated that since July 1965, he has been devoting less than ten hours a month to his religious work

[2] This resume is contained in the Selective Service file, F. 62-70.

but maintained that he was financially unable to put in more time than that. The Hearing Officer reported that the registrant admitted that he had not been employed for the last two or three weeks before the hearing, and that he had been receiving unemployment insurance compensation and there was no indication that he was devoting more time to his religious activities. The Hearing Officer reported that the registrant admitted that he owned a 1962 Tempest automobile, upon which he is making payments; that he has borrowed quite a sum of money and that his time was taken up with the payment of his debts. The Hearing Officer concluded that the registrant's explanation of his failure to spend more time in his religion is unsatisfactory, illogical and showed a lack of religious fervor; that it did not appear that the registrant's religion is the guiding force of his life, and that he used his debts for worldly possessions as an excuse for his lack of activity in his religion; that he had not made a serious study of his religion and his knowledge of his religion was superficial. The Hearing Officer recommended that the conscientious objector claim of the registrant be not sustained.

* * * [O]n September 15, 1964 the registrant executed a Current Information Questionnaire, which is in the registrant's file, indicating that he had never been married and was working for Local No. 2048, Corona, California. The resume shows, page 3, that a representative of Carpenter's Union, Local 2048 at Corona, advised that the registrant had been a member of that local since June 1963 and at the time of the interview, October 1965, the registrant was three months in

arrears in his dues and that it was his understanding that the registrant was recently married. He also stated that the registrant never associated with other members of the local who are Jehovah's Witnesses. The resume shows, page 8, that a representative of Corona Credit Bureau advised that in March 1964 the registrant was shown on their records with a wife. An overseer in the LaSierra Unit of Jehovah's Witnesses in Riverside, California, who had discussed the registrant's inactivity in his religion with him, advised on page 6 of the resume that he was unable to pinpoint the reason for the registrant's inactivity other than to consider it negligence on the registrant's part. Inconsistencies in the registrant's testimony and conduct, together with other indications, are believed to furnish an adequate basis in fact for the denial of the registrant's conscientious objector claim. * * *

The Department of Justice concludes that the registrant has failed to sustain his burden of proving his conscientious objector claim and recommends to your Board that the claim be not sustained and that he be not classified in Class I-O or in Class 1-A-O.

On March 23, 1967 the appeal board by a 3-0 vote classified petitioner 1-A (F. 14, 73) and petitioner was notified of this classification on March 31, 1967 (F. 14). On April 21, 1967 an order to report for induction on May 16, 1967 was mailed to petitioner (F. 15, 76). Petitioner reported as ordered, was found qualified for induction, but refused to submit to induction (F. 15, 77). In his own handwriting petitioner stated, "I will not go into the Army, because

it is against my personal beliefs, according to the Bibble [sic]" (F. 79).

ARGUMENT

The essence of petitioner's claim for conscientious objection status was that he was a Jehovah's Witness who adhered to that sect's opposition to war in any form. While that claim may have made out a *prima facie* showing, it was not conclusive since it is the applicant's subjective sincerity which is the ultimate question. Thus in *Olguin* v. *United States*, 392 F. 2d 329, 330-331 (C.A. 10), in which it was held that there was a basis in fact for defendant's I-A classification, the court stated:

> Appellant relies upon the fact that his initial registration contained a statement that he is a conscientious objector and his subsequent conscientious objector's questionnaire set out that he is a member of the Jehovah's Witnesses sect. A registrant cannot claim conscientious objector status as a matter of right simply because he produces certain objective matter—such as membership in a religious sect which advocates pacifism—which tends to support his claim [citing cases].

Similarly, in *Keefer* v. *United States*, 313 F. 2d 773, 776-777 (C.A. 9) where the denial of the defendant's claim for a 1-O classification was sustained, the court observed:

> The conscientious objector classification, a matter of legislative grace, is based upon the subjective religious beliefs of the particular individual, not upon the religious tenets of an organization

> of which he is a member. A registrant's mere assertion that he has the requisite subjective beliefs does not establish his right to the privilege. The Board was faced with the difficult task of determining whether appellant was sincere in his stated beliefs and any facts in the file which cast doubt on his veracity were relevant to this determination. * * *

The ultimate question for the Selective Service boards to decide here was petitioner's sincerity in objecting on religious grounds to participation in war in any form. Objective facts were relevant only insofar as they assisted in determining the purely subjective question of petitioner's sincerity. *Witmer* v. *United States*, 348 U.S. 375, 381-382; *United States* v. *Seeger*, 380 U.S. 163, 185.

Petitioner's Selective Service file contained sufficient objective facts concerning petitioner's personal sincerity, to provide a basis in fact for denying him the exemption. Cf. *Witmer* v. *United States*, 348 U.S. 375, 380-382. The Hearing Officer of the Department of Justice, who interviewed petitioner, found that petitioner did not appear to have made a serious study of his religion; that his knowledge of it was superficial; that he devoted less than 10 hours per month to his religious activities after July 1965; and that this and other information [3] warranted the conclusion that he showed a lack of religious fervor and that his religion

[3] This other information included inconsistencies as to whether petitioner was married or not, and that his claim concerning his dedication to religious activities was inconsistent with statements of others who had dealings with him (see *supra*, pp. 6-7).

was not the guiding force of his life (F. 59). Based upon his thorough examination of petitioner's testimony and conduct (F. 60) it was the conclusion of the hearing officer—adopted by Selective Service—that petitioner was not entitled to this exemption.

There is no substance to the claim (Pet. 11) that it was improper for the Hearing Officer to consider petitioner's limited—and at times nonexistent—participation in his sect's activities. The extent of petitioner's religious activity was a relevant factor to be considered in determining whether he was sincere in his religious beliefs—the alleged sincerity of which was the basis of his claim. See *e.g.*, *Imboden* v. *United States*, 194 F. 2d 508, 513 (C.A. 6), certiorari denied, 343 U.S. 957; cf. *Witmer* v. *United States*, *supra*, 348 U.S. at 383.[4] There was, in short, a basis in fact for refusal to grant the 1-O classification.[5]

---

[4] This case accordingly does not involve the question of the availability of a conscientious objector classification to a registrant whose conscientious opposition to war in any form does not stem from "religious training and belief", an issue raised in several cases now pending upon petition for a writ of certiorari. See, *e.g.*, *Vaughn* v. *United States* No. 35 Misc., O.T. 1969; *Welsh* v. *United States*, No. 76, O.T. 1969.

[5] *Chernekoff* v. *United States*, 219 F. 2d 721, 724 (C.A. 9), relied upon by petitioner (Pet. 11-12), indicates that a registrant's claim to a 1-O classification cannot be denied solely because of sporadic criminal convictions for isolated deviations from the principles of his religion. There is nothing in *Chernekoff*, however, to show that a registrant is entitled to a 1-O classification by merely adhering to a certain religion, if from the totality of the objective circumstances a reasonable inference may be drawn that he is not sincere in his conscientious objector claim.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD.
Solicitor General.

WILL WILSON.
Assistant Attorney General.

JEROME M. FEIT,
ROBERT G. MAYSACK.
Attorneys.

JULY 1969.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 359167 87